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ATTORNEYS FOR WHITE SANDS GROUP, L.L.C.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

IN RE:	§	
	§	
MORRIS RADIO ENTERPRISES,	§	CASE NO. 09-31416-HDH-11
L.L.C., dba THE BUSINESS SHRINK	§	
and	§	
	§	
PRS II, LLC, dba FORT MORGAN	§	CASE NO. 09-31436-BJH-11
	§	
DEBTORS.	§	Jointly Administered Under
	§	Case No. 09-31416-HDH-11
	§	

**AMENDED MOTION OF WHITE SANDS GROUP,
L.L.C. FOR RELIEF FROM THE AUTOMATIC STAY**

**TO THE HONORABLE HARLIN D. HALE
UNITED STATES BANKRUPTCY JUDGE:**

COMES NOW White Sands Group, L.L.C. ("White Sands"), a creditor and party in interest in the above styled bankruptcy proceeding, and hereby files its Amended Motion for

Relief from the Automatic Stay to (the “Amended Motion”).¹ In support of this Amended Motion, White Sands respectfully shows the Court as follows:

PRELIMINARY STATEMENT

1. In a separate filing, White Sands moves this Court to dismiss the Chapter 11 filing of PRS II, LLC, (“PRS II”) or, in the alternative, change venue (the “Amended Motion to Dismiss”) [Docket No. 118]. In the Amended Motion to Dismiss, White Sands has set out a lengthy factual background in order to fully explain the improper nature of PRS II’s Chapter 11 case. In an effort to avoid burdening the Court with duplicative facts, White Sands has not included many of those facts in this Amended Motion. The factual background set out in the Amended Motion to Dismiss is expressly incorporated into this filing.

2. White Sands requests relief from the automatic stay imposed by section 362 of title 11 of the United States Code (the “Bankruptcy Code”). This Court has before it a Chapter 11 proceeding, as styled above, in which the bankruptcy proceedings of PRS II have been jointly administered with those of Morris Radio Enterprises, L.L.C. (“Morris Radio”). There is no independent jurisdiction or venue of this Court as to PRS II, which is an entity with no nexus to the Northern District of Texas.²

3. All of the property of PRS II is located in Baldwin County, Alabama, where there are already long-pending civil claims in the state Circuit Court. Those claims include claims against debtor PRS II by White Sands, an Alabama entity, which have been pending since 2005, with two intervening appeals concluded in the Supreme Court of Alabama, and which are ready for trial. See PRS II, L.L.C. v. White Sands Group, L.L.C., et al., CV-2005-923, Baldwin

¹ The motion is amended solely to correct the omission of one word in the movant’s legal name.

² PRS II is an LLC organized in the State of Delaware, with its principal place of business either in Alabama or in Illinois.

County, Alabama; White Sands Group, L.L.C. v. PRS II, LLC, et al., 2009 WL 2841114 (Ala. 2009). PRS II originally filed the action in Alabama seeking affirmative relief against White Sands.

4. The whole of PRS II's business is the purchase and development of a large tract of land in Baldwin County, Alabama. That land was acquired from the Langans (the defendants in the adversary proceeding lodged by PRS II in this court), and a portion of that land was claimed by White Sands. At all times, PRS II knew it was engaged in litigation with White Sands in Alabama, indeed, that it had initiated the litigation and that such litigation was pending on appeal in the Supreme Court of Alabama when the current bankruptcy petition was filed. However, PRS II did not list White Sands as a creditor, nor did it advise White Sands or the Alabama Supreme Court of the filing, nor serve them with notice. This bankruptcy case was filed on March 6, 2009 (the "Petition Date"), and on September 4, 2009, the Alabama Supreme Court ruled against PRS II in the appeal; only then, faced with an adverse ruling which determined that PRS II must defend the damage claims against it in the Alabama trial court, did PRS II file a "Notice of Bankruptcy" in the Alabama state court.

JURISDICTION

5. This Court has jurisdiction to consider the Amended Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding under 28 U.S.C. § 157(b). Venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409. The relief requested herein may be granted in accordance with the provisions of Bankruptcy Code sections 105(a) and 362 and Rule 4001(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

RELIEF REQUESTED AND REASONS THEREFOR

6. Bankruptcy Code Section 362(a) generally stays pending judicial proceedings commenced against a debtor prior to the filing of the debtor's petition. See 11 U.S.C. § 362(a)(1). However, Bankruptcy Code section 362(d)(1) states:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay for cause, including the lack of adequate protection of an interest in property of such party in interest.

11 U.S.C. § 362(d)(1). “Cause is an intentionally broad and flexible concept, made so in order to permit the courts to respond in equity to inherently fact-intensive situations.” In re Sentry Park, Ltd., 87 B.R. 427, 430 (Bankr. W.D. Tex. 1988); see also Mooney v. Gill, 310 B.R. 543, 546 (N.D. Tex. 2002) (“The bankruptcy court must balance the hardships of the parties and base a decision on whether to modify the automatic stay on the degree of hardship involved and the goals of the Bankruptcy Code.”); In re Cont'l Air Lines, Inc., 61 B.R. 758, 780 (S.D. Tex. 1986) (“In sum, a bankruptcy court must be guided by equitable principles in exercising its discretion to enforce or modify the automatic stay.”).

7. Moreover, Congress expressed its intention that the automatic stay should be lifted, in appropriate circumstances, to allow certain litigation to proceed in another forum:

[I]t will often be more appropriate to permit proceedings to continue in their place of origin, when no great prejudice to the bankruptcy estate would result, in order to leave the parties to their chosen forum and to relieve the bankruptcy court from any duties that may be handled elsewhere.

See H.R. Rep. No. 95-595, at 341 (1977); S. Rep. No. 95-989, at 50 (1978). Ironically, in this case, it was PRS II that was the original plaintiff in the state court litigation, and therefore the party that chose that forum.

8. The Baldwin County litigation will provide the quickest resolution to the claims made by White Sands and the PRS II claims against the Langan family. The Baldwin County litigation has been ongoing for over four years. “Where the stayed non-bankruptcy litigation has reached an advanced stage, courts have shown a willingness to lift the stay to allow the litigation to proceed. IBM v. Fernstrom Storage & Van Co. (In re Fernstrom Storage & Van Co.), 938 F.2d 731, 737 (7th Cir. 1991); In re Ice Cream Liquidation, Inc., 281 B.R. 154, 167 (D. Conn. 2002).

9. Denial of White Sands’ motion would lead to duplication and waste. As discussed above, the Baldwin County litigation was initially commenced over four years ago and has twice been before the Supreme Court of Alabama. If the stay is not modified, many of these issues—if not all—will need to be re-litigated in this Court. As noted earlier, this almost certainly conforms to the wishes of PRS II, despite the weighty burden placed on this Court. Duplication is inefficient and detrimental to the public interest. See Peterson v. Cundy (In re Peterson), 116 B.R. 247, 250 (D. Colo. 1990); In re Hoffman, 33 B.R. 937, 941 (W.D. Okla. 1983).

10. Petitioner White Sands prays that the stay be modified *nunc pro tunc* to the Petition Date, so as to avoid an argument by the debtor (which deliberately avoided giving notice to the Alabama Courts and to the White Sands parties) that the Alabama Supreme Court decision must be vacated because of the unknown automatic stay. While it can be predicted with some confidence that if the matter were returned to the Alabama Supreme Court, the September 4, 2009 decision would be reinstated (and PRS II and its counsel be at risk of monetary and disciplinary sanctions), such a process would further add to the cost and waste of judicial resources.

11. Re-litigation of the issues and facts involved in the Baldwin County litigation would violate the well-established principle that issues of state law should be resolved by state courts whenever possible. See Thompson v. Magnolia Petroleum Co., 309 U.S. 478, 481-83 (1940). The claims asserted both against PRS II and by PRS II involve core issues of state law, and would be best handled by a court within the state of Alabama. This is especially true given the substantial familiarity gained over the time already invested in that endeavor.

NO PRIOR REQUEST

12. No previous request for the relief sought in this Amended Motion has been made to this or any other court.

CONCLUSION

WHEREFORE, White Sands respectfully prays that this Court enter an order, substantially in the form annexed hereto as Exhibit A, (a) modifying the automatic stay pursuant to 11 U.S.C. § 362(d)(1), effective *nunc pro tunc* to the Petition Date, so that pending state court proceedings in Baldwin County, Alabama be allowed to resume, including any proceedings, orders, judgments, or appeals related thereto, so that liability on White Sands' claims, as well as those of the Langans, can be established and liquidated, and damages and other relief may be granted on White Sands' claims; and (b) providing such other and further relief as is just and proper.

Respectfully submitted this 7th day of January 2010.

COPELAND, FRANCO, SCREWS & GILL, P.A.

By: /s/ C. Nelson Gill

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ATTORNEYS FOR WHITE SANDS GROUP, L.L.C.

CERTIFICATE OF CONFERENCE

I hereby certify that on January 6, 2010, I conferred with counsel for the Debtor regarding the foregoing Amended Motion. While not agreeing to the relief requested herein, Debtors' counsel did agree to keep the same notice periods and response deadlines established by the filing of the original motion.

s/ Eric C. Seitz

Eric C. Seitz

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Amended Motion of White Sands Group, L.L.C. for Relief from the Automatic Stay was provided via e-mail (**w/out exhibits**) to the parties listed below and a copy of same (**w/exhibits**) to the parties listed on the attached Service List via United States mail, postage prepaid, on this the 7th day of January 2010.

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s/ Eric C. Seitz

Eric C. Seitz

EXHIBIT A

PROPOSED ORDER

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

IN RE:	§	
	§	
MORRIS RADIO ENTERPRISES,	§	CASE NO. 09-31416-HDH-11
L.L.C., dba THE BUSINESS SHRINK	§	
and	§	
	§	
PRS II, LLC, dba FORT MORGAN	§	CASE NO. 09-31436-BJH-11
	§	
DEBTORS.	§	Jointly Administered Under
	§	Case No. 09-31416-HDH-11
	§	

**ORDER ON AMENDED MOTION OF WHITE SANDS
GROUP, L.L.C. FOR RELIEF FROM THE AUTOMATIC STAY**

Upon consideration of the Amended Motion of White Sands Group, L.L.C. for Relief from the Automatic Stay (the “Amended Motion”), the Court, having jurisdiction to consider the Amended Motion, finding that sufficient notice of the Amended Motion was given, and having heard the evidence and arguments of counsel, finds that the Amended Motion should be granted.

Unless otherwise stated herein, all capitalized terms shall have the meaning ascribed to them in the Amended Motion or accompanying exhibits.

It is therefore ORDERED that the Amended Motion is GRANTED and the automatic stay is lifted, *nunc pro tunc* to the Petition date, as to White Sands Group, L.L.C. (“White Sands”) to allow White Sands to proceed with certain state court proceedings pending in Alabama.

It is further ORDERED that the fourteen day stay of an order granting a motion for relief from the automatic stay pursuant to Federal Rule of Bankruptcy Procedure 4001(a)(3) is hereby waived.

Dated: _____

U.S. Bankruptcy Judge

SERVICE LIST

Morris Radio Enterprises, L.L.C.
Case No. 09-31416
Document No. 6427760

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